



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/170765

PRELIMINARY RECITALS

Pursuant to a petition filed December 11, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the ContinuUs in regard to Family Care benefits (a Medicaid-related program), a hearing was held on February 16, 2016, by telephone. A hearing set for January 20, 2016, was rescheduled at the petitioner's request. With the parties' consent, the hearing record was held open for 10 days for submission of letter briefs.

The issue for determination is whether the Family Care agency correctly reduced the petitioner's supportive home care (SHC) hours from 49 to 33 hours weekly.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED] Monroe Unit Supr.
ContinuUs
28526 U.S. Hwy. 14
Lone Rock, WI 53556

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Green County.

2. The petitioner has been found eligible for participation in the Wisconsin FCP for many years. FCP services are furnished through a local care management organization (CMO), which is under contract with the FC program.
3. The petitioner, age 63, resides in an apartment. Due to an accident suffered in 2002, the petitioner suffers from chronic pain and uses a wheelchair for all mobility. He has no feeling from the waist down, and is bothered by persistent muscle spasms and tremors. The petitioner also has diagnoses of bilateral rotator cuff pain, pressure ulcers, osteomyelitis, history of flap surgeries, and history of depression. He occasionally falls, with a bone-breaking fall occurring in 2009 during a transfer. The petitioner is able to eat, dress, groom, use the toilet (catheterized), take his medication, and move within his home (with wheelchair) independently. He requires supervision and physical assistance when bathing and transferring. Transportation to medical appointments is needed. The petitioner is independent in money management, decision-making, and the use of a telephone. He requires help with meal preparation, laundry and housekeeping. The petitioner has adequate cognition, does not wander, and is not dangerous to self or others.
4. The petitioner has been granted 49 hours of SHC weekly since May 2010. The CMO re-determined the amount of time needed by the petitioner as part of an overdue annual review.
5. Post-review, the CMO tabulated the amount of SHC time needed by referring to a standardized task time table, which it did not proffer into the record. Using its Resource Allocation Method analysis, the CMO decided to reduce the SHC hours to 33 weekly. It was anticipated that 25 of the hours would be allocated to grocery shopping/linen changes/laundry/range of motion exercise/TENS therapy/supervision/bathroom cleaning. Also weekly, 6.5 hours were contemplated as being used for acupuncture/chiropractic appointments. Finally, 3.5 hours monthly would be used for general house cleaning, medication pick up, and a once monthly longer grocery shopping episode, plus 2.75 hours monthly for wound clinic visits.
6. *Daily & Weekly Cares:* The petitioner requires 60 minutes daily for set up/removal from the TENS unit. Likewise, 60 minutes daily are needed two episodes of transferring in and out of his standing chair for exercise. Using the Wisconsin Department of Health Services' *Personal Care Activity Time Allocation Table*, the petitioner's daily bath/shower requires 30 minutes of daily assistance. Using the same *Table*, additional transfers should be allocated 30 minutes daily. Another state task table allocates the following weekly minutes for the following tasks requested by the petitioner: grocery shopping – 66, linen change – 13, laundry -72, bathroom cleaning – 16, occasional meal prep – 27, light vacuum/dust/sweep/mop – 32. The petitioner requires an extra 60 minutes weekly beyond this guidance for extra laundry. The parties agree that the petitioner requires 6.5 hours weekly for transportation to acupuncture and chiropractic appointments.

Monthly Cares: The best, but admittedly minimal, evidence in the record supports the monthly allocation of 2.75 hours for wound clinic visits. The agency allocated 3.5 hours monthly for general house cleaning, medication pick up, and a once monthly longer grocery shopping trip. The petitioner requires two 1.5 hour monthly extended house cleanings, one hour monthly for medication pick up and an extra one hour monthly for the extended grocery shopping trip.
7. On November 30, 2015, the CMO issued a *Notice of Action* which reduced the SHC hours to 33 weekly, effective December 15, 2015. After receiving the *Notice*, the petitioner then filed a fair hearing request.

DISCUSSION

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

I conclude that most of the reduction of FC-paid SHC hours was appropriate. The state code language on the scope of permissible services for the FC reads as follows:

DHS 10.41 Family care services. ...

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Note: The services that typically will be required to be available include adaptive aids; adult day care; assessment and case planning; case management; ... personal care services; ... supportive home care; ... and community support program services.

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Supportive home care (SHC) services are included in the list of covered services in the statutory note above. The Department's CMO contract is viewable at <https://www.dhs.wisconsin.gov/familycare/mcos/cy2016mcocontract.pdf> . Having established that SHC hours can be a covered service, the question that remains is, how many SHC hours are essential to meeting the petitioner's needs?

The petitioner disagrees with the CMO's proffered service plan because it provides 33 hours weekly of supportive home care. The CMO based its 33 hour figure on observations of the petitioner in October 2015. A specific breakdown of task times (beyond the 25/6.5/3.5/2.75 hours splits) was not proffered by the CMO at hearing.

The skeletal legal guidance that pertains to determining the type and quantity of daily care services that must be placed in an individualized service plan (ISP) is as follows:

HFS 10.44 Standards for performance by CMOs.

...

(2) CASE MANAGEMENT STANDARDS. The CMO shall provide case management services that meet all of the following standards:

...

(f) The CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee, with the full participation of the enrollee and any family members or other representatives that the enrollee wishes to participate. ... The service plan shall meet all of the following conditions:

1. *Reasonably and effectively addresses all of the long-term care needs* and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e)1.
2. *Reasonably and effectively addresses all of the enrollee's*

long-term care outcomes identified in the comprehensive assessment under par. (e)2 and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.

3. *Is cost-effective compared to alternative services* or supports that could meet the same needs and achieve similar outcomes.

...

(emphasis added)

Wis. Admin. Code §DHS 10.44(2)(f).

In applying the code ISP standards, I conclude that neither party was arguing for the appropriate number of service hours. The CMO incorrectly concluded that the petitioner required no assistance with bathing and transfers, and that he only needed help with some Incidental Activities of Daily Living (IADLs), such as laundry. The exact breakdown of time assigned to the various IADLs was not provided. Without such a breakdown, it is difficult to conclude that the CMO's decision was rational. However, as will be seen below, my own time analysis coincidentally arrived at nearly the same result as that reached by the CMO.

Although the petitioner argued with prolixity for a 49 hour allotment, his evidence did not adequately support his argument. He did proffer a physician letter, in which the doctor declared that the petitioner needs an aide to help with bathing, transfers, and dressing. I accepted the doctor's view as correct with respect to bathing and transfers, as the petitioner's diagnoses are consistent with needing help with these tasks. Plus, he has sustained serious injuries in a past transfer fall. However, his diagnoses are not consistent with needing help with dressing, so I did not follow the doctor's lead on that task. In assigning minutes for performance of the bathing and transfer tasks, this Judge relied upon the Wisconsin Department of Health Services' *Personal Care Activity Time Allocation Table*, published in the Department's *ForwardHealth Update*, No. 2009-08. Relying on the Table, the petitioner requires 3.5 hours weekly for bathing and 3.5 hours weekly for transfers. Per his testimony, he also requires 7 hours weekly for TENS unit activities, and 7 hours weekly for transfers in/out of his standing chair for exercise.

Another state task table allocates the following *weekly* minutes for the following tasks requested by the petitioner: grocery shopping – 66, linen change – 13, laundry -72, bathroom cleaning – 16, occasional meal prep – 27, light vacuum/dust/sweep/mop – 32. I adopt these numbers, which total 3.75 hours weekly. To this amount, I will give the petitioner the benefit of the doubt and add an additional 60 minutes, based on the petitioner's representation that he needs more laundry time. The petitioner provided a daily task breakdown, which claimed that a load of clothing and towels for his one-person household required laundering every day. In the absence of documentation from a medical or care provider that the petitioner is soiling his clothes multiple times weekly, this was not a credible assertion. In addition, the parties agree that the petitioner requires 6.5 hours weekly for transportation to acupuncture and chiropractic appointments.

For *monthly* tasks, this Judge adopted the petitioner's position that he requires one extra hour for two pharmacy trips, and one extra hour for a longer grocery shopping trip. To arrive at a 3.5 monthly hour total for this subset of tasks, the agency apparently allowed 1.5 hours monthly for a more thorough housecleaning of the petitioner's residence (*weekly* time was already allotted for cleaning the bathroom and light vacuuming). This ALJ has had several housecleaners over three decades, and they have been able to clean a 2,700 square foot, four-bedroom residence in two hours on an every-other-week schedule. I am guessing that the petitioner's apartment is considerably less than 2,700 square feet, so 1.5 hours per bi-weekly cleaning should be enough time for task completion. I conclude that 5.0 hours for the monthly tasks of pharmacy trips, the shopping trip, and two complete housecleaning episodes is reasonable (1+1+3.0 hours). When these five monthly hours plus the undisputed 2.75 hours monthly for wound clinic

visits, are averaged, the result is to add 1.75 hours weekly to the SHC total ($5+2.75=7.75$ divided by $4.3=1.75$).

After tallying the time allotments that I have determined, in my discretion, to be “reasonable” and “cost-effective,” a weekly average of 34.0 hours of service time results. The tally, expressed in hours per week, is as follows:

TENS unit-related	7.0
Standing chair-related	7.0
Bathing	3.5
Other transfers	3.5
Other weekly tasks	3.75
Extra laundry	1.0
Acup/Chiro trips	6.5
Monthly tasks, averaged	<u>1.75</u>
Weekly Total	34.0

CONCLUSIONS OF LAW

1. To meet the petitioner’s credible care needs, the petitioner reasonably requires 34.0 hours of SHC service time weekly from the Family Care program.

THEREFORE, it is

ORDERED

That the petition herein be remanded to the CMO with instructions to enter **34.0** hours of weekly SHC time effective December 15, 2015, into the petitioner’s current ISP. This action shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

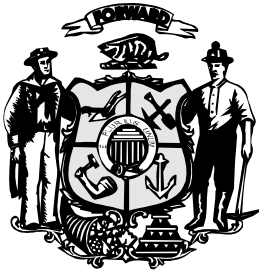
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 4th day of April, 2016

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 4, 2016.

Continuus

Office of Family Care Expansion

Health Care Access and Accountability